

# ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR08-292

BENNY LEE CREGGETT

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** SEPTEMBER 17, 2008

APPEAL FROM THE JEFFERSON  
COUNTY CIRCUIT COURT  
[NO. CR2006-833-1]

HONORABLE BERLIN C. JONES,  
JUDGE

AFFIRMED

**ROBERT J. GLADWIN, Judge**

Appellant Benny Creggett appeals the Jefferson County Circuit Court order convicting him of aggravated robbery and theft of property and sentencing him to terms of forty years and twenty years, respectively, in the Arkansas Department of Correction. The sentences are to be served concurrently. On appeal appellant challenges the forty-year sentence for aggravated robbery, arguing that it is an unduly harsh punishment for a first offense. We affirm.

## *Facts*

The State filed a felony information on September 13, 2006, alleging that appellant committed the offenses of aggravated robbery and theft of property at the Bank of Star City on or about September 5, 2006. Counsel was appointed for appellant, and a jury trial was set for May 22, 2007. Several continuances were granted by the circuit court, and ultimately,

appellant entered a guilty plea on both charges on November 13, 2007. A sentencing hearing was held on January 3, 2008, at which time three employees of the Bank of Star City testified.

Ms. Tressa Harris, Ms. Elizabeth Ford, and Ms. Missy Owen all testified as to their observations as bank tellers during the robbery. All three women testified that two armed men, one identified as appellant, came into the bank and committed the robbery and theft of approximately \$4,000. They testified that each man had a gun, that appellant carried a sawed-off twelve-gauge shotgun and his partner had a pistol, and that two shots were fired inside the bank during the robbery.

Appellant testified on his own behalf, declaring that he had not intended to hurt anyone while robbing the bank and that he was depressed over various family issues and needed money. He read a letter into the record detailing his confession, expressing his remorse, and requesting leniency in sentencing. He admitted to driving to the bank with his partner with the intention of robbing the bank. He admitted that he and his partner entered the bank with their faces covered, carrying loaded guns, and demanded money from the tellers while holding them at gunpoint. Additionally, appellant admitted to firing the shotgun while inside the bank during the commission of the robbery. The circuit judge sentenced appellant as previously set forth, and a judgment and commitment order was filed on January 7, 2008. Appellant filed a timely notice of appeal on January 11, 2008.

#### *Standard of Review*

The United States Supreme Court has held that the Eighth Amendment to the United States Constitution forbids only extreme sentences that are grossly disproportionate to the

crime. *See Ewing v. California*, 538 U.S. 11 (2003). In *Bunch v. State*, 344 Ark. 730, 43 S.W.3d 132 (2001), the Arkansas Supreme Court noted that it has interpreted the provisions in both the state and federal constitutions identically on the issue of the prohibition against cruel and unusual punishment. The supreme court in *Bunch, supra*, held that if the sentence fixed by the circuit court is within legislative limits, the appellate court is not free to reduce it even though it might consider the sentence to be unduly harsh. *See also Benjamin v. State*, \_\_ Ark. App. \_\_, \_\_ S.W.3d \_\_ (May 28, 2008). Arkansas appellate courts have identified the following “extremely narrow exceptions to this general statement of the law: (1) where the punishment resulted from passion or prejudice; (2) where it was a clear abuse of the jury’s discretion; or (3) where it was so wholly disproportionate to the nature of the offense as to shock the moral sense of the community.” *Bunch*, 344 Ark. at 740, 43 S.W.3d at 138.

#### *Preservation of Issue*

The State argues that appellant’s argument fails because it is procedurally barred. Our supreme court has previously stated that we will not consider an argument contesting a sentence if the appellant, even though present during the sentencing phase, failed to voice to the circuit court his objection to the sentence. *Ladwig v. State*, 328 Ark. 241, 943 S.W.2d 571 (1997). A defendant who makes no objection at the time sentence is imposed has no standing to complain of it. *Id.* However, even considering appellant’s argument on the merits, we hold that his sentence should be affirmed.

### *Discussion*

Arkansas Code Annotated section 5-12-103(b) provides that aggravated robbery is a Class Y felony, and as such, carries a penalty range of not less than ten years and not more than forty years, or life. Appellant points out that the presumptive sentence listed on the judgment and commitment order was “PEN 120,” at the bottom of the sentencing range, and four times shorter than the sentence he received. He maintains that his situation was not one where the presumptive sentence had to be trumped by the statutory sentence because it was below the statutory range, as provided in Arkansas Code Annotated section 16-90-803(b)(3)(C).

Appellant urges that the forty-year sentence imposed falls under the first narrow exception previously set forth and was the result of passion or prejudice flowing from the testimony of the three bank tellers. He acknowledges that any robbery at gunpoint would naturally instill a severe sense of fear in the victims and create lasting bad memories; however, he maintains his position that a forty-year sentence for his participation in the robbery was unduly harsh because he was a first offender.

We disagree. We cannot say that appellant’s sentence was grossly disproportionate to his crime or that any of the narrow exceptions are applicable. The testimony of the victims, as well as appellant himself, during the sentencing phase of the trial was sufficient evidence that appellant entered the bank with a loaded sawed-off shotgun and his face covered, with the intention of robbing the bank. Further, there was evidence that he fired the shotgun and his accomplice fired a pistol during the commission of the robbery, endangering and terrorizing everyone inside the bank.

Although he contends that the resulting forty-year sentence was unduly harsh, Arkansas Code Annotated section 5-12-103(b) provides that he could have received life imprisonment, likely a much longer sentence because he was only twenty-four years old at the time of sentencing, or the circuit court could have run the aggravated robbery sentence consecutive to the twenty-year theft-of-property sentence. *See* Ark. Code Ann. § 5-4-403.

Additionally, the State correctly notes that appellant was sentenced by a circuit judge rather than by a jury. Although he abstracted the testimony from the sentencing hearing, appellant failed to abstract any of the circuit judge's comments during the proceeding and did not argue that the circuit judge expressed any passion or prejudice in those comments. This court will not presume prejudice when error is alleged, and an appellant must show prejudice because we do not reverse for harmless error. *See Hickman v. State*, 372 Ark. 438, \_\_\_ S.W.3d \_\_\_ (2008). Appellant has failed to meet that burden; accordingly, we affirm.

Affirmed.

ROBBINS and BIRD, JJ., agree.